HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION Nos. 14260 AND 20730 OF 2003

Date:10-07-2013

W.P.No. 14260 of 2003

BETWEEN:

M/s Sri Venkateswara Constructions,
Contractors .. Petitioner

AND

The Superintending Engineer, PWD,
R&B Nizamabad Circle, Nizamabad
& 2 others. ..
Respondents

Counsel for the petitioner : Mr. C. Gunaranjan

Counsel for Respondents : Government Pleader

W.P.No. 20730 of 2003

BETWEEN:

Bharathi Constructions Company .. Petitioner

AND

The Chief Engineer (R&B),
Roads, Erramanzil, Hyderabad
& 2 others. ..
Respondents

Counsel for the petitioner : Mr. M. Panduranga Rao

Counsel for Respondent Nos.1 & 2 : Government Pleader for Roads & Buildings

Counsel for Respondent No.3 : Government Pleader for Civil Supplies.

The Court made the following:

COMMON ORDER:

In these two writ petitions the action of the respondents in recovering seigniorage charges on ordinary earth and other material from out of the bills payable for executing the contract works entrusted to the petitioners is challenged and refund of the amounts recovered from the bills of the petitioners is sought.

2. Heard Sri Challa Gunaranjan, learned counsel for the petitioner in W.P.No.14260 of 2003; Sri M. Panduranga Rao, learned counsel for the petitioner in W.P.20130 of 2003; and the learned Government Pleader for the respondents in both the cases.

3. It is the contention of the learned counsel for the petitioners that there is no provision in the agreement entered into by them with the respective respondents about payment of seigniorage charges on ordinary earth, and therefore, while preparing estimates for the contract work, this factor was not taken into account. Therefore, they contend that the respondents cannot recover the said amounts from the bills of the petitioners.

4. The learned counsel for the petitioners relied upon an unreported judgment dated 22-02-1993 in W.P.No.20666 of 2003;

judgment dated 23-04-2003 in W.P.No.6392 of 2003; and judgment dated 17-12-2002 in W.P.No.24393 of 2002.

5. Per contra, the learned Government Pleader submits that Rule 10 of the A.P. Minor Mineral Concession Rules, 1966 authorizes the levy and collection of seigniorage charges on material which is excavated from the quarries and utilized in the execution of the work; vide G.O.Ms.No.466 Industries & Commerce (MI) Department, dated 24-08-2000, the words "Morrum/Gravel and ordinary Earth" were substituted in Schedule-I, Serial No.8 under column-2 for the words "Morrum/Gravel" in exercise of powers conferred under sub-section 1 of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957; and that the respondents are entitled to, therefore, recover the said amounts from the petitioners' bills notwithstanding the absence of a specific clause in the agreement for such recovery. It is also contended that the dispute in these writ petitions is contractual in nature and arise out of an agreement between the petitioners and the respondents, and therefore, the proper forum for adjudication of the said dispute is either by arbitration or by a competent Civil Court; and that writ petition under Article 226 of the Constitution of India is not maintainable.

6. The learned Government Pleader cited decisions in **M/s MRKR-MBGEC, rep.by C.Manohar Reddy and others v. Chief Administrative Officer, Construction, South Central Railway, Secunderabad and another**[1]; **Reliable Power Systems Private Limited, Hyderabad v.**

Government of India and others[2]; and an unreported judgment dated 23-06-2005 in W.P.No.23852 of 2005 and batch.

7. In the present case also, the agreement between the respective parties is not placed before this Court. The learned Government Pleader states that where the value of the amount claimed by the Contractor exceeds Rs.50,000/-, the contractor has to approach the Civil Court. This is not disputed by the learned counsel for the petitioners.

8. In **M/s MRKR-MBGEC's case (1 Supra)**, this Court held:

> *"We are also inclined to approve the view expressed by the learned single Judge in the reference order on the maintainability of the writ petition. It is true that adjudication of the plea raised by the petitioners against the levy of seigniorage charges on ordinary sand involves interpretation of the terms and conditions of contract, but, that itself does not justify entertaining of petition under Article 226 of the Constitution of India ignoring the fact that an equally efficacious alternative remedy is available to the petitioners either by filing civil suit or by seeking reference to an arbitrator…"*

It relied upon the decisions in **State of U.P. v. Bridge & Roof Co.(India) Ltd.;**[3] **Kerala State Electricity Board v. Kurien E. Kalathil;**[4] **State of Jammu and Kashmir v. Ghulam Mohd. Dar,**[5] and held that the petitioners therein

ought to avail the effective alternative remedy of a civil suit or arbitration if such a course is available.

9. In **Reliable Power Systems Private Limited's case (2 Supra),** a Division Bench of this Court held:

> *"14. We have already noticed the nature of the dispute arising out of the concluded contract between the parties which relates to withholding of certain amounts by the Chief General Manager on various grounds. The decision to withhold certain amounts payable to the appellant, according to it, is highly arbitrary, and irrational. It is clearly evident from the material available on record that the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is a pure and simple commercial contract. Any dispute relating to interpretation of terms and conditions of the agreement/purchase order is to be resolved by an arbitrator under Clause 23 of Annexure A of the purchase order whereunder the Chief General Manager, Telecom Stores, Kolkata or some other person appointed by him is the sole arbitrator. Failure to appoint an arbitrator contrary to the terms and conditions may give rise to a cause for enforcing contractual obligation and get an arbitrator appointed in accordance with law. The writ petition is not the remedy.*
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> *15. It is fairly well settled that the doctrine of fairness or the duty to act fairly or reasonably is the doctrine developed in the administrative law field to prevent failure of justice where the action is administrative in nature. The doctrine cannot be invoked to amend, alter, or vary the express terms of contract between the parties. Obviously, both the parties entered into the agreement/purchase order based upon a pure*

commercial consideration. The transaction is nothing but a pure and simple one which is commercial in its nature. There is no State power as such involved. In such a situation, even if the contract is terminated wrongfully or some benefits accrued under the purchase order are withheld wrongfully it cannot be questioned in a writ petition contending that such withholding is arbitrary or unreasonable. This Court would not exercise its writ jurisdiction for determining the private rights of the parties arising from or relating to a contract, as such determination may also involve enquiiry into disputed questions of fact which the Court would not ordinarily undertake.

20. In our considered opinion, the public law remedy available under Article 226 of the Constitution of India cannot be availed to get enforced the contractual rights and obligations voluntarily entered by and between the parties. Public law remedies are not available to change, annul or for modification of the terms and conditions of a contract mutually agreed by and between the parties. Nor this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can undertake to resolve the disputes arising out of concluded contract".

10. Following the said decision, I am of the view that the public law remedy available under Article 226 of the Constitution of India, cannot be availed by petitioners to enforce the contractual rights and obligations voluntarily entered into by and between the parties, and this Court in exercise of jurisdiction under Article 226 of the Constitution of India need not undertake to resolve the disputes arising out of the concluded contracts.

11. Without expressing any opinion on the correctness of the claim made by the petitioners, these Writ Petitions are dismissed, giving liberty to them to approach the competent Civil Court for refund of the seigniorage amounts which are alleged to have been illegally recovered by respondents from their bills under the contracts entered into by them with the respondents. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any pending, in these writ petitions, shall stand dismissed.

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M.S. RAMACHANDRA RAO, J

July 10, 2013.
Mgr

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[1]. 2006 (3) ALT 274 (D.B.)
[2]. 2003(5) ALD 690(D.B.)
[3]. (1996) 6 SCC 22
[4]. (2000) 6 SCC 293
[5]. (2004) 12 SCC 327